

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2565 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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MANJULABEN V TANK

Versus

STATE OF GUJARAT  
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Appearance:

MR BIPIN I MEHTA for Petitioner

MS MANISHA LAVKUMAR for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/07/2000

ORAL JUDGEMENT

1. The petitioner by this petition is praying for direction to the respondents to pay to her a sum of Rs.50,000/= in the nature of compensation towards mental and physical agony suffered by her by the birth of a child and the expenses for his education and his

maintenance which was as a result of the failure of tubectomy operation done by the respondents.

2. Reply to the special civil application has been filed by the respondents No.1, 2 and respondent No.3. The respondent No.3 is the concerned Doctor who operated the petitioner and he denied that he has committed any negligence. So far as the respondents No.1 and 2 are concerned, they have also denied the same.

3. Learned counsel for the petitioner relying on the decision of the Apex Court in the case of State of Haryana vs. Santra reported in 2000 (3) SCALE contended that it is a case of medical negligence and compensation may be awarded.

4. On the other hand, the counsel for the respondents submitted that it is not a case of medical negligence and the petitioner is not entitled for any compensation.

5. Whether there was medical negligence in performing of the operation or not is a question of fact for which the evidence has to be produced and then only it can be decided. In a petition under Article 226 of the Constitution which is mainly decided on affidavits it is very difficult to find out whether it is a case of medical negligence or not. In such matters, medical expert's opinion is also necessary, which is not possible in this case. The reliance placed on the decision of the Apex Court by the learned counsel for the petitioner is of little help in this case. There the respondent had filed the suit and in the suit, evidence had been recorded and both the parties were free to produce expert's evidence also. Here, it is a case where the petitioner is not an expert. It is very difficult for her to state whether any negligence has been committed by the Doctor who performed the operation. Merely on the basis of the fact that the petitioner has given birth to a child after undergoing operation, it is too difficult to draw an inference that in performing this operation, the Doctor was negligent.

6. This petition in the facts of this case is wholly misconceived and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. No order as to costs.

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